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to the joint account of herself and sister, the deposits created the relation of debtor and creditor between the bank and depositors, and upon decedent's death, the balance of such fund belonged to the sister.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 1174; Dec. Dig. § 301 (5).\* 2 Va.-W. Va. Enc. Dig. 263.]

Appeal from Circuit Court of City of Norfolk.

Suit by Deal's administrator against the Merchants' & Mechanics' Savings Bank and others. Judgment for defendants, and plaintiff appeals. Affirmed.

*Frank L. Crocker* and *Winston Parrish*, both of Portsmouth, for appellant.

*N. T. Green* and *Baker & Eggleston*, all of Norfolk, for appellees.

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DAVIS *v* CITY OF NEWPORT NEWS.

Jan. 11 1917.

[91 S. E. 136.]

**1. Municipal Corporations (§ 375\*)—Pavement Guaranty—Defense.**—It was no defense to an action by a city against a contractor on a paving guaranty that the defects developed from sinking of the street from operation of street cars, where the contractor's bid was on a different basis for streets occupied by street car tracks and streets not so occupied.

[Ed. Note.—For other cases, see Municipal Corporations, Dec. Dig. § 375.\* 10 Va.-W. Va. Enc. Dig. 209.]

**2. Municipal Corporations (§ 375\*)—Pavement Guaranty—Action—Instructions.**—In city's action on pavement guaranty it was proper to refuse instruction that plaintiff's case depended on showing some default of defendant under his contract, and if defects were due to causes over which he had no control defendant would not be liable, where there was no evidence as to causes over which defendant had no control other than matters fully covered by other instructions, since such a charge would invite the jury to indulge in mere conjecture.

[Ed. Note.—For other cases, see Municipal Corporations, Dec. Dig. § 375.\* 10 Va.-W. Va. Enc. Dig. 209.]

Error to Circuit Court of City of Newport News.

Action by City of Newport News against J. W. Davis. Judgment for plaintiff, and defendant brings error. Affirmed.

*J. Winston Read*, of Newport News, for plaintiff in error.

*J. A. Massie*, of Newport News, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.